

770AAKARA

Arraignment

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

07 CR 541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.

7 -----x

8 New York, N.Y.
9 July 24, 2007
4:00 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13
14 APPEARANCES

15 MICHAEL J. GARCIA

16 United States Attorney for the
Southern District of New York

17 STEVE KWOK

Assistant United States Attorney

18 RONALD RUBINSTEIN

19 Attorney for Defendant Karron
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770AAKARA

Arraignment

1 (Case called)

2 MR. KWOK: Steve Kwok, for the government.

3 MR. RUBINSTEIN: Defendant is ready for the
4 arraignment is represented by Ron Rubinstein.

5 Good afternoon, your Honor.

6 THE COURT: Good afternoon, Mr. Rubinstein.

7 Good afternoon, Mr. Karron.

8 I have a superseding indictment here charging the
9 defendant with receiving federal benefits in the one year
10 period in excess of \$10,000 and converting it to his own use or
11 the use of persons other than the rightful owner, \$5,000 and
12 also containing the forfeiture allegation asking that the
13 proceeds of the alleged theft be forfeited upon construction
14 for the substitute assets belonging to the defendant. In that
15 event to be forfeited in the event forfeitable property is no
16 longer pliable.

17 Daniel B. Karron, Mr. Rubinstein, have you seen a copy
18 of the superseding indictment?

19 MR. RUBINSTEIN: We have, your Honor.

20 THE COURT: Have you discussed it with your client?

21 MR. RUBINSTEIN: I have, your Honor.

22 THE COURT: Does he wish to have it read to him at
23 this time or does he waive the reading?

24 MR. RUBINSTEIN: He waives the reading, your Honor.

25 THE COURT: All right. Mr. Karron, have you seen a

770AAKARA

Arraignment

1 copy of the superseding indictment?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: And have you discussed it with
4 Mr. Rubinstein?

5 MR. RUBINSTEIN: Yes, I have.

6 THE COURT: Do you wish to have the indictment read to
7 you or do you waive the reading?

8 THE DEFENDANT: I waive the reading.

9 THE COURT: Do you wish a plea of not guilty be
10 entered in your behalf?

11 THE DEFENDANT: I wish to enter a plea of not guilty.

12 THE COURT: All right. A plea of not guilty will be
13 entered on your behalf.

14 Where do we stand on the discovery in this matter?

15 MR. KWOK: I've produced discovery to defense counsel.

16 MR. RUBINSTEIN: I don't know that they've produce all
17 the discovery but I have a problem that I think --

18 THE COURT: I just want to be sure the discovery has
19 been produced.

20 MR. RUBINSTEIN: Some discovery was produced but I had
21 understood from the government last time it doesn't seem that
22 there's anywhere near the discovery that they indicated they
23 had, nor should it be what they have.

24 MR. KWOK: I don't know what Mr. Rubinstein was
25 expecting but that's the entirety of the discovery that we

770AAKARA

Arraignment

1 have. The only thing we did not produce --

2 THE COURT: They are talking. Just a second. I want
3 you to have a chance to talk.

4 MR. RUBINSTEIN: Yes, sir.

5 THE COURT: So go ahead, Mr. Rubinstein, talk and we
6 will come back to you.

7 (Pause)

8 MR. RUBINSTEIN: They haven't produced anything from
9 the account and Joan Haze rolling documentation, this is a
10 document case and expenses and following expenses, they haven't
11 produced any of that. They seized all this stuff. They
12 haven't produced the records, employee records and what has
13 been paid to employees. They claim that the \$400,000 out of
14 this grant was misappropriated but they --

15 THE COURT: They haven't given you any indication of
16 how it was misappropriated.

17 MR. RUBINSTEIN: Correct, your Honor. Precisely.

18 MR. KWOK: This is the first time that I've heard that
19 discovery was insufficient. I've produced discovery which is
20 about two boxes of it about two weeks ago to defense counsel
21 and that's the entirety of the documents that we have.

22 THE COURT: To Mr. Rubinstein?

23 MR. RUBINSTEIN: Mr. Rubinstein.

24 THE COURT: How was it produced to him?

25 MR. KWOK: It was packaged in a box in our office and

77OAAKARA

Arraignment

1 Mr. Rubinstein sent someone from his office to pick them up.

2 MR. RUBINSTEIN: Correct, your Honor. And I just
3 thought that there was more discovery coming. Nobody had
4 indicated that this was the entirety of the discovery that was
5 available. And, frankly, from looking at it as we see it there
6 is all -- they seized all of Dr. Karron's records. They have
7 not produced for us his records. I don't know how he could
8 possibly defend this case if he doesn't have access to all his
9 records. Not only did they take all the records, they seized
10 all of the computers with all of the disks inside. They say
11 that they're not interested in the disks. They just want the
12 shells. But they haven't returned any disks and --

13 THE COURT: All they have to produce is things
14 relative to the crime charged.

15 MR. RUBINSTEIN: Everything ask --

16 THE COURT: They can have the seizure and then they
17 may be isolating for you and for your client's benefits those
18 records for safety will go to prove or may be used as proof of
19 the crime charged.

20 MR. RUBINSTEIN: Judge, we need the records of every
21 dime that was received from the government and how each dime
22 was spent. They just give us a blanket thing suggesting that
23 there was 300 and some odd thousand dollars that were
24 inappropriately expenses.

25 THE COURT: Well, now, wait. Let me ask you a

770AAKARA

Arraignment

1 question. These are the records of Computer Aided Surgery Inc.
2 you are talking about?

3 MR. RUBINSTEIN: Yes, your Honor.

4 THE COURT: And Computer Aided Surgery Inc. financial
5 records aren't included in the documents that you have?

6 MR. KWOK: It was. I am honestly astounded by what
7 Mr. Rubinstein said. The documentary evidence is voluminous.
8 It includes the documentation of the grant money that
9 Dr. Karron and his company received. It also included bank
10 statements of how those money got spent. We have American
11 Express card statements documenting every transaction unrelated
12 to the grant that was spent.

13 THE COURT: American Express card statements cards
14 that were issued by the corporation?

15 MR. KWOK: No. It was an American Express card that
16 was in the company's name, but, nonetheless, used to purchase
17 unauthorized --

18 THE COURT: It was in the company's name.

19 MR. KWOK: Exactly. It was.

20 Then we also produced bank account statements
21 belonging to the defendant himself personally as well as to the
22 company and then it was pretty obvious if you look at the money
23 flow, how money was spent, what type of money came from where.
24 And Mr. Rubinstein mentioned accountant Joan Haze's audit
25 report. Joan Haze is an accountant that for a while was

770AAKARA

Arraignment

1 employed by CASI Company to look into accounting and her full
2 audit report was any nooks and so that she relied on.

3 The only thing hasn't been turned over is the actual
4 physical checks also used to purchase unauthorized items. And
5 in my discovery letter I offered to make those available for
6 inspection. But copies of those checks are attached to the
7 bank statements that I've produced to defense counsel.

8 So I don't know what else is relative that he wants

9 THE COURT: The originals are available for
10 inspections and the copies have already been produced to the
11 defendant?

12 MR. KWOK: That is correct, your Honor.

13 MR. RUBINSTEIN: A number of which are illegible. We
14 don't have any of the card records of Mastercards and the other
15 cards charge cards that were used, Paypal where they paid
16 expenses. Dr. Karron produced to the government invoices
17 showing where these items were purchased. Those invoices
18 haven't been turned back over to the defense. This is a
19 technical case, your Honor.

20 THE COURT: But Mr. Rubinstein, as I understand the
21 thrust of the government's case is not that certain funds
22 weren't spent for business purposes, but that of the funds
23 received some were diverted to the defendant's personal use; is
24 that right?

25 MR. KWOK: That's correct, your Honor.

770AAKARA

Arraignment

1 THE COURT: So you don't need -- Mr. Kwok's point is
2 you don't need what the business expended properly. It's what
3 the business expended improperly that's at issue.

4 MR. KWOK: That is exactly right, your Honor. The
5 only thing the government needs to prove at the trial is that
6 more than \$5,000 of federal funds were misspent and so we don't
7 need to prove every dime that is granted through dr. Karron's
8 company was spent. We only need to prove \$5,000. We currently
9 believe that about 390,000 was spent but an amount of about
10 \$5,000 is considered relevant conduct. But the element of the
11 crime are just \$5,000.

12 THE COURT: Mr. Kwok, you also have to prove that the
13 corporation Computer Aided Surgery Inc., CASI as you call it,
14 received benefits and in a one year period in excess.

15 MR. KWOK: That's correct, your Honor. And we did
16 turn over documents stating, documenting that fact including
17 proposed budgets, final approved budget and the bank statements
18 also would document the money that Dr. Karron's company
19 received was in excess of the statutory special amount.

20 THE COURT: Well, I think that they to prepare for
21 trial, Mr. Kwok, they would want to have all documents that you
22 contend were spent in excess of the \$5,000, in other words, for
23 their personal benefits.

24 MR. KWOK: Yes. And I did turn over everything that I
25 had. I am not withholding anything relevant to the offense

770AAKARA

Arraignment

1 charged in this case. But my point is simply that in light of
2 the \$5,000 threshold even --

3 THE COURT: Have you got a covering letter that
4 accompanied these documents?

5 MR. KWOK: Yes, I have a cover letter.

6 THE COURT: Itemizes the items that were turned over?
7 Categorized?

8 MR. KWOK: Yes, in rough categorization.

9 THE COURT: In the period of time that's involved?

10 MR. KWOK: That is correct, your Honor.

11 MR. RUBINSTEIN: Categorized not itemized, number one.

12 THE COURT: They don't have to itemize as long as they
13 are complete.

14 MR. RUBINSTEIN: But they are not complete, Judge.

15 THE COURT: Are they Bates numbered?

16 MR. KWOK: They are Bates numbered.

17 MR. RUBINSTEIN: Let's say, Judge, that they say
18 expenditure and was inappropriate and we have an invoice that
19 we turned over to them that shows that it was appropriate.
20 They don't want to give us back the invoice. So how could
21 Dr. Karron prepare a defense? And also the issue of whether or
22 not he intended to commit a crime is important to how he
23 expended all the grant money in this case. And the employment
24 records are records which they claim that he overpaid employees
25 as I understand it. And, therefore, that was part of this

770AAKARA

Arraignment

1 390,000 and the monies that he received himself. He was a
2 salaried employee. We need all of these documentation. I
3 don't see how that's a burden on the government to give back
4 his own documents.

5 MR. KWOK: Mr. Rubinstein seems to have in mind
6 documents that we're not aware of. I've turned over
7 everything. In terms of documentary proof I think that
8 discovery that I produced numbered over 5000 or so pages. I am
9 not aware of any documents in the government's possession that
10 Mr. Rubinstein is referring to that would be relevant to this
11 case at all.

12 THE COURT: What he wishes to do is to go through the
13 expenditures that you have isolated and furnished him the
14 checks or charge accounts and he wants to look at them.

15 The invoices or receipts, as I understand it, that he
16 claims would show that that expenditure which made facially
17 look at appear to be diversion of improper diversion of funds,
18 was in fact the proper diversion of funds.

19 That is what, he wants it for his defense, so to
20 speak.

21 MR. KWOK: I think to the extent that there is a
22 defense based on the use of funds the documents that I have
23 produced are entirety of the documents and to the extent that
24 defense counsel can't marshal a defense based on those
25 documents --

77OAAKARA

Arraignment

1 THE COURT: What about providing him with a copy of
2 the documents seized so that he can, perhaps, develop the
3 thesis that these expenditures from those documents were, in
4 fact, not for his personal use but were, in fact, for company
5 purposes?

6 MR. KWOK: I'm not aware of any seizure of documents,
7 per se. We did as part of a separate action filed a seizure
8 warrant in magistrate court to seize the computers. And the
9 only reason we did that is because a lot of the equipment used,
10 purchased using CASI's funds were unauthorized expenses and we
11 wanted to make sure after this case is over there will be
12 valuable property to satisfy the forfeiture allegation.

13 But after having done that, I spoke to defense counsel
14 and he was worried that in those computers there might be
15 attorney/client privilege materials and I assured him and he
16 was fine at the time from our conversation that the government
17 would not attempt to go into those computers to snoop around to
18 violate attorney/client privilege or other privileged
19 materials, but would just leave the computers as is and just
20 seize them without searching them.

21 So I don't know whether Mr. Rubinstein is now
22 suggesting that we go through those computers to try to search
23 for stuff that may or may not be related to this case.

24 MR. RUBINSTEIN: I don't know why the government can't
25 just make duplicates of all the disks that are inside these

770AAKARA

Arraignment

1 computers that have nothing to do with the hardware and produce
2 them for the defense. Those are Dr. Karron's records in there.

3 THE COURT: Duplicate record made, is that what you
4 are saying?

5 MR. RUBINSTEIN: Yes. We want to be able to have the
6 orders records that are on the computer.

7 MR. KWOK: I believe to the extent that there are
8 those records, those records have already been turned over
9 because those records were used by the internal auditor to
10 conduct the audit and if specifically Dr. Karron as I
11 understand it, kept a very detailed Quicken books whether it be
12 personal checks or expenses of the company.

13 THE COURT: I don't follow you.

14 MR. KWOK: What I am saying is to the extent that
15 there are records in those computers, those records have
16 already been turned over to the defense.

17 THE COURT: How? In what? Who turned them over?

18 MR. KWOK: I did. And that's because --

19 THE COURT: The computer's hard drive, soft drive?

20 MR. KWOK: The documents the software, the documents
21 in the computers that may be relevant to this case. And that
22 is because even before the government indicted the defendant
23 there was an internal audit by the internal auditor that looked
24 at all the records that Dr. Karron had to prepare her
25 reasonable internal audit. And as part of our discovery to

770AAKARA

Arraignment

1 produce that audit report we also produced the underlying data
2 that supported that audit report. And, specifically, what I
3 was referring to is Dr. Karron's Quicken bookkeeping system in
4 which he would document in a spreadsheet format every check
5 that he wrote either on behalf of himself or on behalf of the
6 company, the date and the amount and that spreadsheet was also
7 included in the materials that I turned over.

8 THE COURT: Who did you deliver these materials to?

9 MR. KWOK: As I stated, I agreed with defense counsel
10 to put them on the first floor of our office and, subsequently,
11 defense counsel sent somebody to pick them up.

12 THE COURT: So that's separate and apart from the
13 discovery in that case?

14 MR. KWOK: No. That is part of the discovery, part of
15 the two boxes that I referred to.

16 THE COURT: But I thought from your description that
17 this had something to do with the internal audit.

18 MR. KWOK: Which preceded the indictment. So when I
19 produced discovery I had already gotten the underlying raw data
20 that supported the internal audit report that I also turned
21 over as part of my discovery.

22 THE COURT: Had you turned over the audit material to
23 them at the same time?

24 MR. KWOK: Yes, I did.

25 THE COURT: So that they have the computer or the

770AAKARA

Arraignment

1 computer material.

2 MR. KWOK: They have a print out of it. The Quicken
3 bookkeeping system, the print out from the spreadsheet that he
4 was referring they have that already.

5 MR. RUBINSTEIN: I will submit a letter to the Court
6 outlining all the matters the government has that has not been
7 turned over. They haven't turned over the Quicken reports
8 showing the expenses line by line. They haven't turned over a
9 number of items and I don't understand why they are resisting
10 giving us these disks either. Since they don't want to use
11 these disks and they have no monetary value they could turn
12 over the disks and hard drive to us without it.

13 THE COURT: I don't know that they want to do that
14 because I suppose they could be modified.

15 MR. RUBINSTEIN: Let them duplicate it then. I don't
16 understand. Dr. Karron from day one has told me he has
17 voluminous records, as the government's indicated, he has
18 records showing every check he wrote, every credit card with a
19 back-up document, all of this is on the computers. All of this
20 stuff is on the computers, your Honor. He even took a little
21 parking ticket from me for a few dollars that he wanted to save
22 as an expense. I mean this is the kind of detailed stuff he
23 has in these records and I think these records are to show that
24 he never had any intention of doing anything illegal. But I
25 will produce for the Court the letter outlining exactly what

770AAKARA

Arraignment

1 was turned over and exactly what Dr. Karron claims is missing
2 and we can go forward from that.

3 THE COURT: Let's do it very promptly.

4 MR. RUBINSTEIN: I am willing to do that, judge, and I
5 will do it very promptly for the following reason: I, because
6 everything that Dr. Karron has has been seized, including his
7 apartment condominium. Frankly, I don't understand the theory
8 of it, but the government's seized it. It's part of the
9 forfeiture. He's owned this apartment for many years before
10 this grant. The only thing they say he paid is maintenance out
11 of money that came from the grant. The apartment is used as an
12 office.

13 But bottom line is he is not in a position to have
14 private counsel. I am willing to stay aboard I was going to
15 make a Monsanto application to see if we can get paid out of
16 forfeiture and he is not a position to leave the apartment. He
17 needs a place to live. So I am going to ask the Court at this
18 time since he is not in a position to retain counsel that your
19 Honor have him fill out forms for CJA.

20 THE COURT: I can't imagine -- receiving a retainer to
21 cover the work that's been done so far, Mr. Rubinstein. It
22 doesn't appear to me that there's been anything other than some
23 discovery produced and appearance on arraignment. So I don't
24 know about -- this man is alleged to have gotten \$390,000.

25 MR. RUBINSTEIN: They don't claim he has it. They

770AAKARA

Arraignment

1 claim that he spent it outside of the dictates of the grant. I
2 don't think anybody is claiming that he put any of this money
3 into his pocket or has it still in his pocket. They're
4 claiming that he expended items that he had no right to expend
5 outside of the budget. Had he to submit a budget. And the
6 money was spent. There is no issue that the money was spent.
7 I think the government will concede that. The question is
8 whether or not the monies was spent appropriately pursuant to
9 the grant and what was contained in the budget.

10 THE COURT: I understand. You'd better get your
11 letter in quickly so Mr. Kwok can respond to it. But I don't
12 see why the materials that Mr. Kwok, the printed material which
13 I gather is a print out from the computer isn't adequate for
14 your purposes. So you'd better cover that as an addition to
15 the computer disks. Because computer disks, I suppose, what I
16 would have to have is not only computer disk for you but a
17 computer disk for the Court. So if there is any dispute about
18 production or alteration of the records of the subsequent time
19 it can be readily ascertained through normal alterations. That
20 is an expense. I don't know what the expense is to duplicate
21 these documents.

22 MR. RUBINSTEIN: Dr. Karron says there's approximately
23 one thousand gigabytes which is ten terabytes. I, frankly,
24 Judge, don't know what those letters mean. But he says that it
25 would probably cost to have an expert duplicate that between

77OAAKARA

Arraignment

1 ten and \$20,000.

2 MR. KWOK: Your Honor, if I may, I mean these
3 computers that we're talking about are not just your ordinary
4 laptop computers. They are very high powered super computers
5 primarily used for research and other purposes. I don't know
6 whether it's even cost effective or even technically feasible
7 to download or make a copy of everything on these hard drives
8 with terabytes of memory.

9 To the extent, again, that there is any record at all
10 in those computers I believe the government's already produced
11 a hard copy print out of those accounting records. The rest I
12 am not sure what Mr. Rubinstein is referring to in these
13 computers. But as far as records go relating to this case that
14 the government intends to rely on those have all been turned
15 over to defense counsel.

16 MR. RUBINSTEIN: The defense in this case is very
17 simple. He didn't intentionally do anything wrong, if he did
18 anything wrong at all. So showing all that he did for the
19 money is going to be part of the defense to show the jury that
20 he had no intention of doing anything improper. This man even
21 after the grant was stopped continued working on --

22 THE COURT: I don't think that flies, Mr. Rubinstein.
23 I think you can't go into a defense that shows all the good
24 things he did and all the things that he did. The question is
25 whether or not these funds were misapplied and that is the

770AAKARA

Arraignment

1 issue.

2 I agree that you have to have a record to be able to
3 show that they weren't misapplied but I think I haven't heard
4 anything so far. Maybe you can educate me, but I haven't heard
5 anything so far that indicates that we should do more than see
6 whether there's more than a financial record that you require
7 or any rebuttal of the case that this application of funds is
8 going is to be produced.

9 MR. RUBINSTEIN: There's also e-mails relating to the
10 grant, your Honor, and those documentation are important for
11 the defense. The government -- I'd ask your Honor that the
12 government provide us with a detail list outlining the \$390,000
13 that they now claim was inappropriately spent by Dr. Karron and
14 then at least we have an idea what documents relate to that.

15 THE COURT: They've produced those to you?

16 MR. RUBINSTEIN: No, they have not shown us any list
17 of where the alleged missing money is.

18 THE COURT: Maybe you ought to go and have a personal
19 consultation with Mr. Kwok and maybe he can show them to you.
20 That would be the best way.

21 MR. KWOK: I'll be glad to do that, your Honor.
22 Again, I think your Honor has it exactly right. The government
23 is not contending that, for example, some of the money, for
24 example, that the government contends was misapplied was used
25 for example to renovate Dr. Karron's apartment. We are not

770AAKARA

Arraignment

1 saying every cent towards the renovation was spent out of
2 government funds. Dr. Karron did spend some of his own money
3 as part of that home renovation. But that doesn't take away
4 from the fact that the government funds were indeed misapplied
5 toward home renovations. So I don't know what the records that
6 Mr. Rubinstein had in mind --

7 THE COURT: He is saying some of the home was used and
8 as na office.

9 MR. KWOK: That's actually quite irrelevant under the
10 rules of the grant because even if it was indeed used as an
11 office you cannot pay overhead expenses using grant money.
12 Grant money can only be used for direct and research expense
13 and it is clear rent is not used for those items.

14 THE COURT: Not rent but what about fixings up the
15 office so that if that -- or bringing electricity or bringing
16 in high powered computers into the office.

17 MR. KWOK: That's also disallowed and the reason is
18 simply because there is an approved budget. Every item that
19 Dr. Karron was allowed to use was listed in that budget and if
20 you deviate from that budget you first have to seek pre
21 approval to do that and at no point did Dr. Karron receive
22 that.

23 THE COURT: Renovation was a budgeted item?

24 MR. KWOK: It was not allowed.

25 THE COURT: Any renovation of the office was a

770AAKARA

Arraignment

1 budgeted item?

2 MR. KWOK: I don't believe any of it was. We are only
3 allowed to pay, for example, to hire scientists and research
4 personnel and to buy a specified number of computers for your
5 research. But to renovate your apartment or office to eat out
6 which is another item that Dr. Karron spent money on or to even
7 pay for Internet services they are specifically disallowed
8 under the terms of the grant. And another big item is back
9 rent, and that is also clear that you are not supposed to pay
10 rent or mortgage under the grant.

11 MR. RUBINSTEIN: The government wants the grant to be
12 written in granite. The fact of the matter is that these
13 grants they have modifications all the time. People spend
14 money, as long as they're spending it legitimately that's an
15 issue at trial.

16 THE COURT: But, Mr. Rubinstein, it's very clear that
17 if there's a grant it'll have terms to it and you can argue it
18 but they are not binding. There can be modifications and the
19 jury will make a determination.

20 When will you have your letter that you wish to
21 produce to Mr. Kwok?

22 MR. RUBINSTEIN: I'll have that in a week from
23 tomorrow which is which is the first of August.

24 THE COURT: When can we hear the reply?

25 MR. KWOK: How about a week.

770AAKARA

Arraignment

1 THE COURT: August 8?

2 MR. KWOK: That would be fine.

3 THE COURT: Okay.

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